

**BENJAMIN N. SOUEDE**, OSB. No. 081775

benjamin@angelilaw.com

**DAVID H. ANGELI**, OSB No. 020244

david@angelilaw.com

Angeli Law Group LLC

121 SW Morrison Street, Suite 400

Portland, OR 97204

Telephone: (503) 954-2232

Facsimile: (503) 227-0880

Attorneys for Defendant Sierra Media, Inc.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

FLIR Systems, Inc., an Oregon corporation,

CASE NO. CV10-971-HU

Plaintiff,

v.

Fluke Corporation and Sierra Media, Inc.,

Defendants.

**DEFENDANT SIERRA MEDIA, INC.'S  
MOTION TO DISMISS THE SECOND  
AMENDED COMPLAINT AND IN THE  
ALTERNATIVE TO DISMISS COUNTS  
TWO AND SEVEN, AND TO STRIKE  
REQUESTS FOR PUNITIVE  
DAMAGES**

**(ORAL ARGUMENT REQUESTED)**

**LOCAL RULE 7.1 CERTIFICATION**

Counsel for Sierra Media, Inc. (“Sierra Media”) conferred in good faith by telephone with counsel for FLIR Systems, Inc. (“FLIR”) prior to the filing of this Motion. The parties were unable to resolve the dispute presented by this Motion.

**MOTION**

Pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, Defendant Sierra Media respectfully moves to dismiss the Second Amended Complaint (“SAC”) filed against it by Plaintiff in its entirety, because FLIR failed to obtain leave from the Court to amend or to obtain a stipulation from Sierra Media consenting to the filing, as required by Federal Rule of Civil Procedure 15 and by the Court’s May 17, 2011 scheduling order. Indeed, FLIR failed even to seek either leave or a stipulation to amend.

In the alternative, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Sierra Media respectfully moves to dismiss Counts Two and Seven of the SAC for failure to state claims upon which relief may be granted. Sierra Media moves against the Counts in the Complaint as follows:

1. Count Two: FLIR has not stated a claim for unfair competition because it has not alleged sufficient facts regarding any customer confusion.
2. Count Seven: FLIR purports to state a claim for “Agency,” but no such cause of action exists under Oregon law.

Also in the alternative, Sierra Media respectfully moves pursuant to Federal Rule of Civil Procedure 12(f) to strike the SAC's requests for punitive damages, because such damages would be unconstitutional under Article I, Section 8 of the Oregon Constitution.

DATED this 8th day of August, 2011.

Respectfully submitted,

s/ Benjamin N. Souede

BENJAMIN SOUEDE, OSB No. 081775

DAVID ANGELI, OSB No. 020244

(503) 954-2232

Attorneys for Defendant Sierra Media, Inc.